

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

May 26, 2006

Board of Land
and Natural Resources
Honolulu, Hawaii

AFTER-THE-FACT AUTHORIZATION FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO ENTER INTO A MEMORANDUM OF AGREEMENT FOR MANAGEMENT OF THE NORTHWESTERN HAWAIIAN ISLANDS WITH THE U.S. FISH AND WILDLIFE SERVICE AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), NATIONAL MARINE SANCTUARIES PROGRAM AND THE NATIONAL MARINE FISHERIES SERVICE

Submitted herewith for your authorization is a request for an after-the-fact approval to enter into a Memorandum of Agreement promoting coordinated management in the Northwestern Hawaiian Islands (NWHI). The principle purpose of Agreement is to identify the Parties' roles and responsibilities for the long-term comprehensive conservation and protection of the coral reef ecosystem and related marine resources and species of the NWHI. The Agreement constitutes a voluntary agreement among the Department of Land and Natural Resources, State of Hawaii, U.S. Department of Interior's Fish and Wildlife Service, and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration's (NOAA) National Marine Sanctuary Program and National Marine Fisheries Service, to carry out coordinated resource management of the NWHI coral reef ecosystem.

The NWHI includes a vast and remote chain of islands that are a part of the Hawaiian archipelago and provide habitat to numerous species found nowhere else on earth. These islands represent a nearly pristine ecosystem where habitats upon which marine species depend include both land and water. This area represents the majority of the coral reefs found in the United States' jurisdiction and supports more than 7,000 marine species, of which half are unique to the Hawaiian Islands chain. The area is rich in history and represents a place of cultural significance to the native Hawaiians. It is an area that must be carefully managed to ensure that the resources are not diminished for future generations. The NWHI are also the most remote archipelago in the world. This isolation has resulted in need for integrated resource management of this vast and exceptional marine environment. There is a need for coordinated management in this unique and special place where various State and federal agencies and advisory councils have a variety of authorities and jurisdiction.

The NWHI Coral Reef Ecosystem Reserve (Reserve) was established by Executive Orders 13178 and 13196 on December 4, 2000 and January 18, 2001 respectively, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Agreement that sets up shared management for this area was called for in these Executive Orders. This Agreement also establishes the objectives, roles, and responsibilities necessary to develop interim management measures to coordinate activities in the area and is designed to provide the framework to lead to the long-term comprehensive protection of the coral reef ecosystem and related marine resources of the region through its many activities. The effort will focus on coordination of short-term management needs while providing a forum for input into the development of the National Marine Sanctuary management plan and draft environmental impact statement (DEIS), as well as providing similar input into any significant planning effort in the area.

The Agreement develops the functional relationships to effectively coordinate management actions in this area among those resource management agencies that by constitutional, statutory, or executive authority are mandated to manage and provide trustee responsibilities for the resources of the NWHI coral reef ecosystem. The Agreement provides the general terms and conditions under which the Parties intend to cooperate. The Agreement establishes a Northwestern Hawaiian Islands Coral Reef Ecosystem Core Management Committee with oversight for the area. It also outlines several principles to guide management of the area:

- Managing resources by using the best available science and applying a precautionary approach;
- Providing comprehensive conservation of the coral reef ecosystem, land-based resources, and both cultural and historic resources;
- Cooperatively managing the area where joint or adjacent jurisdiction exists and honoring the policies and statutory mandates of all agencies; and
- Regulating and monitoring human activities to enhance an overall appreciation for the need to preserve the biological, cultural, and historic resources of the region.

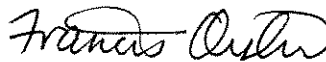
The agencies and their various public and private partners have been working together on numerous projects in the Northwestern Hawaiian Islands for several years. Examples include interagency research, environmental education, marine debris clean up and logistical support. This Agreement formalizes this relationship and sets the basis for future management direction as we move towards National Marine Sanctuary designation.

The Agreement was signed by the Chairperson of the Board of Land and Natural Resources, the Regional Directors of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the Director of the National Marine Sanctuaries Program on May 19, 2006.

RECOMMENDATION:

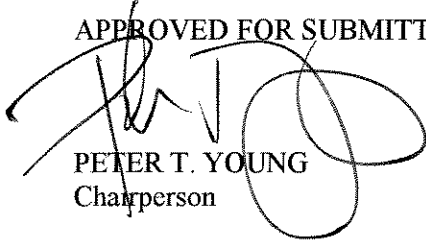
“That the Board authorize and approve after the fact, the signing of the Memorandum of Agreement for shared management of the Northwestern Hawaiian Islands.”

Respectfully submitted,



DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL



PETER T. YOUNG
Chairperson

MEMORANDUM OF AGREEMENT

AMONG THE

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

AND THE

**U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE**

AND THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
AND NATIONAL MARINE FISHERIES SERVICE**

FOR

**PROMOTING COORDINATED MANAGEMENT IN THE
NORTHWESTERN HAWAIIAN ISLANDS**

I. BACKGROUND

- A. The Northwestern Hawaiian Islands (NWHI) include a vast and remote chain of islands that are a part of the Hawaiian archipelago and provide habitat to numerous species found nowhere else on earth. These islands represent a nearly pristine ecosystem where habitats upon which marine species depend include both land and water. This area represents the majority of the coral reefs found in the United States' jurisdiction and supports more than 7,000 marine species, of which half are unique to the Hawaiian Islands chain. The area is rich in history and represents a place of cultural significance to the native Hawaiians. It is an area that must be carefully managed to ensure that the resources are not diminished for future generations. The Northwestern Hawaiian Islands are also the most remote archipelago in the world. This isolation has resulted in need for integrated resource management of this vast and exceptional marine environment. There is a need for coordinated management in this unique and special place where various State and Federal agencies and advisory councils have a variety of authorities and jurisdiction.
- B. The area subject to this Agreement is the lands and waters of the Northwestern Hawaiian Islands out to 50 nautical miles and includes all atolls, reefs, shoals, banks, and islands from Nihoa Island in the Southeast to Kure Atoll in the Northwest. The marine waters and submerged lands of the Northwestern Hawaiian Islands encompass an area extending approximately 1,200 nautical miles long and include State of Hawaii waters and submerged lands, the State Wildlife Sanctuary at Kure Atoll, Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Hawaiian Islands National Wildlife Refuge, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and portions of the fishery management area of the exclusive economic zone (EEZ) surrounding the NWHI.
- C. In accordance with the Hawaii Organic Act of April 30, 1900, c 339, 31 Stat. 141 Section 2, and the Hawaii Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat 4 Section 2, the Islands of the Hawaiian Archipelago, together with their appurtenant reefs and territorial waters with the exception of Midway Atoll, are part of the territory of Hawaii and are managed by the State of Hawaii including all submerged and marine resources. The State of Hawaii, Department of Land and Natural Resources has stewardship responsibility for managing, administering and exercising control over the coastal and submerged lands, ocean waters, and marine resources under State jurisdiction around each of the Northwestern Hawaiian Islands under Title 12, Chapter 171.3 Hawaii Revised Statutes.
- D. In 1909, President Theodore Roosevelt designated by Executive Order 1019 all emergent lands, islands, and reefs from Nihoa Island to Kure Atoll, except Midway Atoll, as a preserve and breeding ground for the native birds and seabirds. Originally administered by the Department of Agriculture as the Hawaiian Islands Reservation, the area was later transferred to the U.S. Fish and

Wildlife Service, Department of the Interior, which now manages the islands and reefs of the Hawaiian Islands National Wildlife Refuge.

- E. The U.S. Fish and Wildlife Service, Department of the Interior, also manages and administers the submerged lands and waters around all islands to 10 fathoms, except at Midway Atoll and Necker Island. Necker Island is administered to 20 fathoms. Midway Atoll National Wildlife Refuge was established in 1988 but Executive Order 13022 transferred jurisdiction in 1996 from the Navy to Interior, which manages and administers the three islands and nearly 600,000 acres of surrounding waters.¹ Under Executive Order 10413 issued by President Truman in 1952, the emergent lands at Kure Atoll were transferred to the Territory of Hawaii and are also managed as a State Wildlife Sanctuary. National wildlife refuges are managed under the National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-ee.
- F. The Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. sec. 1361 et seq., established U.S. jurisdiction over fisheries in Federal waters of the EEZ (generally 3-200 nautical miles offshore), and tasked the Secretary of Commerce in coordination with the Western Pacific Fishery Management Council with stewardship over fishery resources in the EEZ surrounding the NWHI. In 1996, the Sustainable Fisheries Act, Pub. L. 104-297, amended the Magnuson Act and made the National Marine Fisheries Service, in affiliation with the Western Pacific Regional Fishery Management Council, also responsible for protecting essential fish habitat.
- G. The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) was established by Executive Orders 13178 and 13196 on December 4, 2000, and January 18, 2001, respectively, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve boundaries include all waters from 3-50 nautical miles offshore from Nihoa Island to Kure Atoll, except at Midway Atoll where the inner boundary of the Reserve is the seaward boundary of the Refuge. The National Oceanic and Atmospheric Administration is proposing to designate the Reserve as a national marine sanctuary, pursuant to the National Marine Sanctuaries Act, 16 U.S.C. 1431 et seq.
- H. Under the Endangered Species Act, 16 U.S.C. 1531 et seq., and the Marine Mammal Protection Act 16 U.S.C. 1361 et seq., the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, have management responsibilities for threatened and endangered species that nest, breed, and forage in and around these NWHI. The State of Hawaii has also listed many species as

¹ There is not a consensus among the Parties as to the seaward extent of the U.S. Fish and Wildlife Service jurisdiction in the Northwestern Hawaiian Islands. The Parties agree this issue need not be resolved at this time to implement this Agreement.

threatened or endangered and also manages some of their nesting, breeding, and foraging areas, such as at Kure Atoll.

- I. The United States government and the State of Hawaii recognize the importance of healthy coral reef ecosystems to Hawaii's cultural, economic, and biological future. Both recognize that a protected, sustained marine environment in the NWHI is necessary to maintain the health and vigor of rare and protected species such as Hawaiian monk seals and green sea turtles, as well as the vital components of the ecosystem. The Parties are all charged with protecting, conserving, and enhancing fish, plant, and wildlife habitat, including coral reefs and other marine resources in the NWHI. In order to protect the unique threatened and endangered species and coral reef ecosystems associated with these remote islands, the Parties desire to manage the marine environment in a manner free from undue exploitation and degradation due to human activities. To promote coordinated management of the entirety of the coral reef ecosystem throughout the NWHI, the Secretary of Commerce was directed by Executive Orders 13196 and 13178 to work with the Secretary of the Interior and the Governor of the State of Hawaii to enter into one or more memorandum(s) of agreement for the coordinated conservation and management of the submerged lands and waters within the Reserve, Midway Atoll and the Hawaiian Islands National Wildlife Refuges, and the State of Hawaii consistent with relevant authorities.

II. PARTIES, PURPOSE, AND SCOPE

- A. The principal purpose of this memorandum of agreement (Agreement) is to identify the Parties' roles and responsibilities for the long-term comprehensive conservation and protection of the coral reef ecosystem and the related marine resources and species of the NWHI. The Agreement constitutes a voluntary agreement among the Department of Land and Natural Resources, State of Hawaii; U.S. Fish and Wildlife Service, U.S. Department of the Interior; and, the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC) to carry out coordinated resource management of the Northwestern Hawaiian Islands Coral Reef Ecosystem (NWHICRE).
- B. In addition, through this Agreement, the Parties will establish the NWHICRE Core Management Committee. This Agreement develops the functional relationships to effectively coordinate management actions in this area among those resource management agencies that by constitutional, statutory, or executive authority are mandated to manage and provide trustee responsibilities for the resources of the NWHICRE. Wherever possible and appropriate, the Core Management Committee will coordinate and consult with representatives of the U.S. Coast Guard which provides enforcement support for many of the Federal regulations pertaining to marine resources in the area. This Agreement provides the general terms and conditions under which the Parties intend to cooperate and manage the resources.

- C. This Agreement also establishes the objectives, roles, and responsibilities necessary to develop interim management measures to coordinate activities in the NWHICRE and is designed to provide the framework to lead to the long-term comprehensive protection of the coral reef ecosystem and related marine resources of the region through its many activities. The effort will focus on coordination of short-term management needs while providing a forum for input into the development of the National Marine Sanctuary management plan and draft environmental impact statement (DEIS), as well as providing similar input into any significant planning effort in the NWHICRE. The Core Management Committee will work closely with the National Marine Sanctuary Program and others in the development of possible management alternatives that should be considered in the development of the DEIS.
- D. It is the intent of the Parties that coordinated, integrated management will result in comprehensive protection and conservation of the ecosystems of the NWHI in perpetuity. It is also a place of special cultural significance for those of native Hawaiian heritage and provides a unique opportunity to manage marine resources in a manner that honors the rich heritage of the Hawaiian culture as well as the more recent history of the region.
- E. Agreement Principles:
 - 1. The resources in the NWHI shall be managed using the best available science and applying a precautionary approach when there is a lack of information regarding any given activity.
 - 2. The Reserve, National Wildlife Refuges, and State Refuges and waters shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem, land-based resources, and both cultural and historic resources throughout the NWHI.
 - 3. Parties will work together in a coordinated fashion to cooperatively manage areas where joint or adjacent jurisdiction exist, while continuing to honor the policies and statutory mandates of the various resource management agencies.
 - 4. Regulating and monitoring human activities in some of these remote marine environments, including management actions, research, public uses, and cultural practices, where appropriate, will contribute to an overall appreciation for the need to preserve the biological, cultural, and historic resources of the region.

III. REFERENCES AND AUTHORITIES

The Parties are authorized to enter into this Agreement under various authorities most relevant to coordinated management, including:

- A. State of Hawaii Organic Act of April 30, 1900, c 339, 31 Stat. 141 Section 2;
- B. Hawaii Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4 Section 2;
- C. Title 12, Chapter 171.3 , Chapter 183D.4, Chapter 187A.7, Chapter 188.37 and 188.53, Hawaii Revised Statutes, and Title 13, Chapter 125 Hawaii Administrative Rules;
- D. The National Marine Sanctuaries Act, as amended, 16 U.S.C. 1431 et seq.;
- E. The National Marine Sanctuaries Amendments Act of 2000, Pub. L. 106-513;
- F. The Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.;
- G. The Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et seq.;
- H. Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. 1801 et seq.;
- I. Executive Order 13178, as revised by Executive Order 13196, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve;
- J. National Wildlife Refuge System Administration Act of 1996, as amended, 16 U.S.C. 668dd-ee;
- K. Executive Orders establishing the Hawaiian Islands National Wildlife Refuge (E.O. 1019), the Midway Atoll National Wildlife Refuge (E.O. 13022);
- L. Migratory Bird Treaty Act, as amended.

IV. RESPONSIBILITIES OF THE PARTIES

- A. There shall be created a Core Management Committee to promote coordinated management across jurisdictions within the NWHICRE. The Core Management Committee shall be constituted with membership from the Hawaii Department of Land and Natural Resources, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the National Ocean Service.
- B. Responsible Officials: Membership on and participation in the Core Management Committee will include the following individuals or their designees who will serve as responsible officials for this agreement:

1. Chairperson, Department of Land and Natural Resources;
 2. Regional Director, U.S. Fish and Wildlife Service, Pacific Region;
 3. Pacific Islands Regional Administrator, National Marine Fisheries Service;
 4. Director, Office of National Marine Sanctuaries, National Ocean Service;
- C. Participation in the Core Management Committee may also include others as determined appropriate and necessary by the Core Committee or as subject to needs that may arise where additional input is needed.
- D. Responsibilities: The Core Management Committee shall be responsible for the following activities:
1. Develop a strategic management framework for improving the coordinated management of the coral reef ecosystems and related marine resources of the NWHI to maximize the efficient use of financial and human resources to effectively manage these resources. Further, the Parties agree to review progress annually and adjust the management framework as appropriate consistent with applicable laws and policies.
 2. Provide input into the sanctuary designation process and the development of a management plan and DEIS for the proposed sanctuary that is consistent with applicable laws. Coordinate and provide input into any resource agency management plan developed for the NWHICRE.
 3. Provide Parties access and support for enforcement purposes. Additionally, share enforcement resources and data, as appropriate. Develop joint enforcement capabilities as needed to ensure compliance with both State and Federal laws. The enforcement support may involve assistance from additional Federal agencies such as the U.S. Coast Guard. Enforcement may include tracking vessel movements through the implementation of a vessel monitoring system and the development of new surveillance technologies where appropriate.
 4. Coordinate research and monitoring efforts to better understand and address the major threats to the coral reef ecosystem. Initiate joint resource assessment, monitoring, and research activities including, but not limited to, population studies, species inventories assessments, impacts from derelict fishing gear, and documentation of historic and cultural resources. Provide opportunities to participate in research activities initiated by each Party as appropriate. Resources that are extracted from or used within the NWHICRE for any purpose (commercial, recreational, historic or cultural) should have a monitoring program associated with that

activity. Coordinate research, including permits that may be required, and management activities that further the recovery of threatened or endangered species and protect and/or restore the biodiversity within the NWHICRE.

5. Develop a mechanism to access scientific and resource data, as needed, and a protocol to ensure confidentiality of data, especially fisheries data and location of historic elements.
6. Provide support to identify culturally significant and religious locations and non-commercial subsistence cultural uses by Native Hawaiians, which may be practiced without these activities degrading the resources of the NWHICRE.
7. Identify potential tourism, recreational, and commercial activities that may take place within the NWHICRE and the management actions necessary to ensure that these activities do not degrade the resources or diminish the natural character of the NWHICRE.
8. Facilitate opportunities to participate in and collaborate on educational activities and projects between and among the Parties.
9. Develop interagency cooperative agreements, grants, memoranda of understanding, or other appropriate financial instruments that allow for ease in sharing resources, including funds as appropriate, and a sharing of in-kind assistance and support such as the sharing of vessel time, aircraft missions, or other logistical support as a means of facilitating cooperative project opportunities.
10. Develop a coordinated response program to assess and address any human induced or natural threats to the ecosystem.
11. Coordinate permits for activities occurring in the NWHICRE.

V. CONTACTS

- A. The contacts of each Party to this Agreement are:

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- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Parties in writing of such change.

VI. PERIOD OF AGREEMENT, MODIFICATION, OR TERMINATION

- A. This Agreement becomes effective when all Parties sign it. It shall expire 4 years from the date of the last signature or until such time as a new management regime is adopted for the NWHICRE, whichever is earlier. The Parties shall review this Agreement at least every year to determine whether it should be renewed or terminated.

- B. The Parties may modify this Agreement by written amendment only and with the concurrence of all Parties.
- C. The Parties may terminate this Agreement by mutual written consent. Any Party may terminate this Agreement by giving the other Parties 6-month advance written notice.
- D. This Agreement may be amended or superseded by other formal agreements at the end of the Sanctuary designation process, depending on the outcomes of that process.

VII. OTHER PROVISIONS

- A. Nothing in this Agreement is intended to conflict with current agency directives of the Parties or applicable laws. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is deemed invalid, the Parties shall immediately review the Agreement to decide what they should do in light of the invalid term, e.g., amend or terminate the Agreement.
- B. If the Parties disagree over how to interpret this Agreement, they shall present their differences to each other in writing, and they shall discuss them. If the Parties fail to resolve their differences within 30 days, they may refer the matter to higher levels of authority within their organizations.
- C. The Parties agree that participation in the Northwestern Hawaiian Islands Coral Reef Ecosystem Management Core Committee and the responsibilities of the Parties contained in this Agreement do not preclude the Parties from entering into agreements independently with agencies to pursue research or training, to supplement enforcement support, or to increase management capacity in the NWHI.
- D. The Parties hereto recognize the potential value of future participation by other governmental and/or non-profit agencies, as well as other public and private sector organizations. The Parties agree that in the event of programmatic desirability, and when consistent with the intent of the Northwestern Hawaiian Islands Core Reef Ecosystem Management Program, the Core Management Committee may recommend such participation by amendment of this Agreement.
- E. Participation of the Parties to this Agreement is subject to the availability of appropriated funds.
- F. This Agreement defines in general terms the basis on which the Parties will cooperate, and as such, does not constitute a financial obligation to serve as a basis for expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise will be

provided by each signatory Party to the extent that their participation is required and resources are available.

- G. This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in separate agreements, with specific projects between the Parties spelled out. The separate agreements will reference this Agreement.

SIGNATURES

THE STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES

Peter Young, Chairman

Date: _____

THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE

David Allen, Regional Director, Pacific Region

Date: _____

THE U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL OCEAN SERVICE

Daniel J. Basta, Director, National Marine Sanctuary Program

Date: _____

THE U.S. DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE

William Robinson, Administrator, Pacific Islands Region

Date: _____